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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-205026

**DATE:** January 27, 1982

**MATTER OF:** Trail Equipment Company

**DIGEST:**

Low bid, which does not exclude any items from the Buy American certificate and identifies the country in which the equipment is manufactured as "USA or France," is not nonresponsive, but must be evaluated as offering a foreign end product which renders the bid no longer low.

Trail Equipment Company (Trail) protests the rejection of its bid in response to invitation for bids (IFB) No. R6-3-81-120S issued by the Forest Service, Gifford Pinchot National Forest, for a scoop-type, front-end loader, in accordance with Federal Specification No. KKK-L-1542B.

We deny the protest.

The IFB requires that bidders identify the make, model, country, and year of manufacture of the equipment. The IFB also includes the certification and clauses implementing the Buy American Act, 41 U.S.C. §§ 10a-d (1976).

Trail offered the Ford loader model A-66 at \$68,070 and identified the country and year of manufacture as "USA or France" and "1980 or 1981," respectively. Trail argues that its bid is an unconditional offer to supply the loader in accordance with the terms of the IFB, and that it was improperly rejected. Trail further contends that because the Forest Service notice of rejection does not state that its bid was nonresponsive to the Buy American Act requirements of the IFB, the contracting officer did not consider application of the act in evaluating the bid and our Office should not consider it in reviewing the protest.

The Forest Service rejected Trail's bid as nonresponsive because it was indefinite as to the bid intended and failed to furnish definite data upon which the bid could be evaluated. The contracting officer states that the descriptive data Trail submitted rendered its bid unclear and indefinite as to what the firm intended to supply and that the protester's information about the country and year in which the equipment was manufactured made it impossible to determine what was actually offered.

Pursuant to Federal Procurement Regulations § 1-2.407-8(b)(3) (1964 ed. amend. 68), the Forest Service has advised our Office that it intends to award the contract to International Harvester Company (IHC) at \$68,792 while the protest is pending.

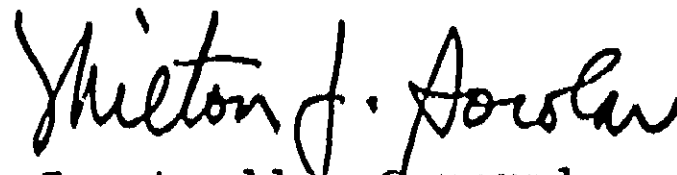
In reviewing such protests, our Office is concerned with whether the contracting agency's action comports with applicable procurement statutes and regulations and is supportable, not whether it was properly supported. Contrary to the protester's assertions, our review is not confined to the specific reasons advanced by the contracting agency at the time the action was taken. Tosco Corporation, B-187776, May 10, 1977, 77-1 CPD 329; The Intermountain Company, B-182794, July 8, 1975, 75-2 CPD 19. Upon our review, we find Trail's bid not to be low following evaluation and, therefore, award to IHC is proper.

Trail's bid does not exclude any items from its Buy American certificate, but indicates that the loader may be manufactured in France or the United States.

Regarding the naming of two countries where the item may be manufactured, this does not render the bid nonresponsive to the Buy American Act because those provisions merely relate to the evaluation of the bid. See 48 Comp. Gen. 142 (1968); International Salt Company, B-200128, January 7, 1981, 81-1 CPD 142. However, Trail may not make an election after bid opening that it meant to furnish a domestic item. The act requires the addition of a 6-percent differential for the purpose of bid evaluation to the price of bids offering foreign end products (making Trail's bid \$72,154.20) and permitting Trail to make such an

election would permit the bidder to affect the relative standing of the bidders after bid opening. Therefore, after proper evaluation, Trail is no longer the low bidder.

Because of the above, it is unnecessary to reach the other issues relating to the responsiveness of Trail's bid and we deny the protest.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States